IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 391 OF 2004

SHRI ANANT L.BORKAR AND 2 ORS., ...Petitioners

Versus

SMT. MARIA A.DINIZ LOURENCO AND 3 ORS., ...Respondents

Mr. M. S. Usgaokar, Senior Advocate with Mr. I. Agha, advocate for the petitioners.
Mr. E. Dias do Rosario, advocate for respondent nos.1 and 2.
Mr. S. D. Padiyar, advocate for respondent no.3.

Coram:- R. M. LODHA, J.

Date:- 19th August, 2005

P.C.

Heard Mr. Usgaokar, learned Senior Counsel for the petitioners and perused the plaint, the application for rejection of the plaint and the impugned Order.

The plaintiffs, who are respondents herein, in the plaint prayed for the following reliefs:-

"(a) For a decree of mandatory injunction directing the defendant nos. 1 to 3, their agents, servants and or any other person acting through or on their behalf from restoring the land to its original condition by filling the excavated portion and demolishing whatever construction done over the suit access so that the same is restored to the ground level of having a width of 4 mts. motorable access.

(b) For a decree of permanent injunction restraining the defendant no.1 to 3 and or their agents and or any other person acting through or on their behalf from carrying on any construction towards the northern side of the suit plot i.e. on the suit access.

(c) The defendant no.4 and 5 to withdraw the approvals and or in the alternate not to allow the defendant no.1 to 3 to carry on the construction as per the approved plans as the same have been secured by mis-leading and by mis-representing the correct area, as also to restrain them from having any projection in the public nullah."

It is true that in the plaint the plaintiffs have averred that they are registered as mundkars of the landlord (defendant no.1) in respect of the dwelling house situated in the property details of which have been set out in paragraph 2 of the plaint. It is also true that the plaintiffs have also averred their easementary right in respect of the suit access, details of which have been set out in paragraph 2. However, besides the relief in respect of the suit access, the plaintiffs have also alleged that the development and construction over the property by the defendants is in utter disregard of the development by-laws and that the plaintiffs have approached the Court by filing the suit not only in the capacity of mundkars, but also in their capacity as neighbours.

Prayer (c) as set out in the plaint and noticed by me above is surely not within the jurisdiction of the Mamlatdar. It is well-settled that the plaint can be rejected either as a whole or not at all under Order 7 Rule 11 of the Code of Civil Procedure. In the present case, prayer (c) cannot be granted by the Mamlatdar under the Goa Mundkars (Protection From Eviction) Act, 1975 and, therefore, the Civil Court cannot be said to have jurisdiction to deal with the suit.

The rejection of the application for rejection of the plaint by the trial Court does not suffer from any legal infirmity. No case for interference is made out in the impugned Order.

The Writ Petition is dismissed in limine.

R. M. LODHA, J.